1990

State of Utah v. Renee Elder : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. CA

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	)	
		Case No. 900065-CA
Respondent,	)	
v.	)	Priority Classification No. 11
RENEE ELDER,	)	
Appellant.	)	

BRIEF OF THE APPELLANT

Interlocutory Appeal from Second District Court, The Honorable Rodney Page

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II. JURISDICTIONAL STATEMENT

Jurisdiction lies in this court pursuant to Utah Code Ann. 78-2a-3(2)(b) (as amended 1988). An order granting permission for the interlocutory appeal was entered on April 11, 1990.

III. STATEMENT OF ISSUES PRESENTED

A. Could authority of a homeowner's daughter to consent to the police search of a locked crawlspace under the home be inferred from the acts of the homeowner (Defendant's mother) in giving her daughter a key to the living area of the home and asking her to bring her some clothes from the home?

Standard of review: The scope of the daughter's authority in the home is a factual issue, and inferences from facts should not be disturbed unless the inferences are unreasonable or circumscribed by law.

B. If the police entered without consent, should the case be remanded for additional fact finding to determine if reliance by the police on the homeowners daughters claim of authority was reasonable under all the circumstances.

Standard of Review: This is a legal issue in which no factual findings were made. This court should defer to the trial courts ability to determine factual issues.

IV. STATEMENT OF THE CASE

A. Nature of case, course of proceedings.

This is an appeal from an order denying Defendan'ts Motion to suppress evidence of a police search and seizure of defendant's home. Defendant filed an interlocutory appeal and further prosecution has been stayed in the trial court pending this appeal.

B. Statement of Facts.

The Defendant is a 31 year old male living in a separate bedroom in the home of his 58 year old mother. (Record, p. 27.) No one else lives in the home. Underneath the single story home is a crawlspace used for storage. Common items are stored in the crawlspace, but the Defendant controlled its access with a keyed lock because of his mother's poor health and lack of interest or ability to enter the crawlspace. (Record pp. 25, 32)

On August 29, 1989, the Defendant's mother entered the hospital. She was taken to the hospital in her own car by her adult daughter, Michelle Lones, who kept the car keys. (Record p. 23) The Defendant's mother asked Michelle Lones to bring her some clothes from the mother's home. (Record pp. 25, 26) A key to the home was with the set of car keys.

At the home, Michelle Lones searched the Defendant's separate bedroom where she found various items she believed to be "drug paraphernalia" in a desk drawer. She did not have keys to the crawlspace, so Mrs. Lones' husband "kicked in" the door to the crawlspace, breaking

the lock. (Record pp. 7, 19) They entered the space and found a large covered box containing a fluorescent light and small plants, which they suspected to be marijuana. (Record p. 7)

They left the home and Mrs. Lones called the Clinton City Police and told them that the Defendant was using drugs in his bedroom and was growing marijuana in the crawlspace under the home. She also reported that the Defendant had gone camping in Montana and would not return for "two or three days." (Record p. 9)

Clinton Officer Tom Reynolds contacted an officer of the Davis Metro Narcotics Strike Force. The two officers met Mr. and Mrs. Lones at the home. Together, they entered the home where Mrs. Lones showed them the "drug paraphernalia" in the desk drawer of the Defendant's bedroom, which the officers seized. (Record p. 6)

The officers then accompanied Mrs. Lones to the entrance of the crawlspace where they noted that the door had been forced open. They entered the crawlspace with Mrs. Lones where they found a large cardboard box from which emanated the glow of a fluorescent light. One end of the box was open slightly. When one of the officers leaned down and peered into the end of the box on the level of the dirt floor, he saw four small potted plants which he believed to be marijuana. The officers seized the plants. (Record pp 6-7)

Neither officer obtained a warrant for the search. (Record pp. 9, 12)

The Defendant was arrested when he returned home from his camping trip, and he was charged with possession of drug paraphernalia and cultivation of marijuana.

The Defendant filed a Motion for Suppression of Evidence asking for suppression of all evidence obtained from the home. (Order, addendum "A") The Honorable Rodney S. Page, after hearing the mother, ordered suppression of the items of "paraphernalia" seized from the Defendant's bedroom, but denied suppression of the alleged marijuana plants found growing in the box in the crawlspace of the home.

The Defendant appeals the denial of his Motion to Suppress Evidence seized from the crawlspace.

V. SUMMARY OF ARGUMENTS

No evidence was presented at trial which would support the court's conclusion that the homeowner's adult daughter had authority to consent to a police search of the locked crawl-space under the home. The daughter did not live in the home. Her mother's instructions to bring some clothes from the home to the hospital do not support an inference that the daughter was charged with the general care of the home. The Defendant was caring for the home.

Whatever authority the daughter had did not extend to the crawlspace under the home which her husband had to force open because the daughter had no key.

The real issue in the case is whether the officers reasonably believed the daughter's claim of authority to consent to a search, that issue is best resolved at the trial level.

VI. ARGUMENT

POINT ONE: IT IS UNREASONABLE TO INFER AUTHORITY TO CONSENT TO A SEARCH OF THE CRAWLSPACE UNDER THE HOUSE FROM THE HOMEOWNER'S REQUEST THAT THE DAUGHTER BRING HER SOME CLOTHES FROM THE HOME.

A fair assessment of inferences from the facts requires Appellant to marshall all of those facts upon which the trial court might have relied in making its inferences.

A. MARSHALLING OF THE EVIDENCE.

The homeowner, Gisseila Elder, Defendant's mother, testified at the hearing concerning the scope of authority she gave her adult daughter, Michelle Lones. She was the sole witness with personal knowlege of the daughter's authority. She was the witness on whom the court relied in defining the daughter's scope of authority in the home. The daughter, Mrs. Lones, did not testify.

The relevant testimony of Gisseila Elder was:

1. Mrs. Elder entered the hospital on August 29, 1989 (record, p. 20).

2. Mrs. Elder expected to stay in the hospital only a few days to rest (record, p. 21).

3. Defendant, Renee Elder, lived in the home with Mrs. Elder (record, p. 20).

4. Mrs. Elder did not ask her daughter to take police to the home (record, pp. 20,26).

5. Mrs. Elder knew nothing of marijuana growing in the crawlspace (record, p. 21).

6. Mrs. Elder did not give her daughter authority to enter the locked crawlspace (record p.22).

7. The daughter had no general power of attorney or other legal authority over her mother's affairs (record p. 22).

8. Mrs. Elder gave her daughter no authority to enter Defendant's bedroom (record p. 22).

9. Mrs. Elder allowed her daughter to keep her car keys after the daughter had driven Mrs. Elder to the hospital in Mrs. Elder's car (record, p. 23).

10. When Mrs. Elder entered the hospital, Defendant was at work (record, p. 22).

11. Defendant went camping over the weekend while Mrs. Elder was in the hospital (record, p. 23).

12. Mrs. Elder had access to the crawlspace under her home, but hadn't been in it for more than a year (record, p. 25).

13. While in the hospital, Mrs. Elder asked her daughter to return to the home and bring her some clothes. She had only "a tee shirt and a pair of....(unintelligible transcript) (record, p. 25, 26).

14. The daughter did bring Mrs. Elder some clothes just before Mrs. Elder left the hospital (record, p. 26).

Police officers who observed and participated in the entry into the home testified that:

15. The daughter, Mrs. Lones, did have a key to the living portion of the home (record, p. 6).

16. The crawlspace door was secured by two deadbolt locks (record, p.6).

17. Mrs. Lones knew the Defendant had locked the crawlspace to maintain privacy in it.

18. Mrs. Lone's husband had "physically kicked ipen" the crawlspace door before the officers arrived (record, pp. 7, 19).

19. Defendant testified that Mrs. Elder and her daughter did not "get along very well" (record, p. 29).

B. FINDINGS OF THE COURT

Based on the marshalled evidence, the court entered this finding:

> The court finds that the crawlspace of the home was a common area used by both occupants of the home, and the consent of the Defendant's mother to search the crawlspace

> would be valid. although the Defendant's mother did not consent to a search of the home or the crawlspace under the home, she gave her daughter a key ring with car keys and a key to the living areas of the home, and asked her daughter to bring her personal items from the home. Implied in these facts was the authority to care for the home and its contents during Mrs. Elder's stay in the hospital. With such authority, Mrs. Lones consented to the entry of the police officers into the crawlspace.
>
> Order and Findings on Defendant's Motion for Suppression of Evidence p. 2 (addendum No. 1).

C. ARGUMENT

The court's inference of a general authority in Mrs. Lones to "care for the home and contents" is unsupported by the evidence. The inferrence is also not a reasonable conclusion and cannot reasonably be extended to the crawlspace.

Mrs. Elder and the Defendant lived together and cared for the home together. When Mrs. Elder entered the hospital, the Defendant was left to care for the home. There is no evidence that Mrs. Elder was concerned about the care of her home or that she knew the Defendant would go camping the next weekend.

Mrs. Elder's request for Mrs. Lones to bring her some clothes carried no instructions for the care of the home. As Mrs. Elder testified "I only asked her to bring me some clothes" (record, p. 26).

Neither is there any evidence that Mrs. Lones actually cared for the home, other than to bring the police to conduct the search. Even more unreasonable is the inferrence that Mrs. Lones'

authority over the home included authority to enter the locked crawlspace. Mrs. Elder did not give her the separate key to the crawlspace or give her any instructions relative to the crawlspace. Mrs. Lones did not discover the key to the crawlspace in the living area of the home. To the contrary, she had no key and gained entry by having her husband kick the door in (record, pp. 7, 9). How this action could be a logical extensiton of Mrs. Elder's request for some clothes is unexplained. No evidence exists that Mrs. Lones needed access to the crawlspace under the home in caring for it during the few days Mrs. Elder was in the hospital. Surely, Mrs. Lones needed no access to the crawlspace to find a few items of Mrs. Elder's clothing. Mrs. Elder hadn't been in the crawlspace for over a year (record, p. 25).

POINT TWO: A THIRD PARTY'S AUTHORITY TO CONSENT TO A HOME SEARCH SHOULD BE STRICTLY INTERPRETED.

Unless a search falls within one of the recognized exceptions to the warrant requirement, it "is unlawful unless authority actually exists" Illinois v. Edward Rodriguez, __ U.S. ___ (1990), 58 U.S.L.W. 4892 (No. 88-2018, decided June 21, 1990) (copy attached as addendum "B"). See also: In Interest of I., R.L., 739 P.2d 1123 (Utah 1989) [waiver only with "actual consent", quoting (at footnote 3) 68 Am Jur 2d Searches and Seizures, Section 46, "consent to a search is not to be lightly inferred, but should be shown by clear and convincing evidence".] This "actual consent" requirement mandates inquiry into the true intent of the homeowner.

If that intent was to allow the third-party limited access rather than general control over the home, it will not support a consent search of the home.

In Stoner v. California, 376 U.S. 483 (1964), the U.S. Supreme Court invalidated a search of a hotel room even though made with the consent of the desk clerk. Certainly, the clerk had the right ot enter the room for hotel purposes, but the search was invalid.

> It is true that the night clerk clearly and unambiguously consented to the search. But, there is nothing in the record to indicate that the police had any basis whatsoever to believe that the night clerk had been authorized by the petitioner to permit the police to search the petitioner's room.
>
> Id at p. 489.

The consent of a landlord or hotel or motel manager is insufficient to justify a warrantless search. See: State vs. Kent, 432 P.2d 64, 20 Utah 2d 1 (Utah 1967).

The right of Mrs. Lones to enter the home for the purpose of getting Mrs. Elder some clothes for the hospital should be strictly construed with clear and convincing evidence. It should not be broadly construed to allow her to kick in the door of the crawlspace under the home and to invite the police to see the evidence.

POINT THREE: THE REAL ISSUE IN THE CASE IS WHETHER THE POLICE OFFICERS REASONABLY BELIEVED THE HOMEWONER'S DAUGHTER TO HAVE AUTHORITY TO CONSENT TO THE SEARCH.

The officers in this case clearly believed Mrs. Lones to have authority to consent to the search of the home (e.g. record, pp. 12, 13). This may support a new exception to the warrant requirements under the June 1990 case of Illinois vs. Edward Rodriguez, supra at 4892. Whether the police believed Mrs. Lones' claim is a factual issue. This new rule was announced after the ruling and appeal in this case.

POINT FOUR: THIS CASE SHOULD BE REMANDED FOR A FACTUAL HEARING ON THE REASONABLENESS OF THE OFFICER' BELIEF IN MRS. LONES' CONSENT.

Because the Rodriguez case, supra, was decided after this appeal was taken, neither party has had an opportunity to address this issue in an evidentiary hearing. The officers will attempt to support the reasonableness of their belief in Mrs. Lones' authority. The Defendant will present evidence that no urgency existed (record, p. 17), that Mrs. Elder was available but never called (record, p. 17), that Mrs. Lones' lack of a key to the crawlspace should have aroused the officers' suspicions, and that other factors should be weighed in the decision. A remand to the trial court is the best resolution of this issue.

VII. CONCLUSION

This court should reverse the trial court's finding of actual consent for the search of the crawlspace under the home, and remand the case to the trial court to determine whether the officers' belief in the daughter's authority to consent was

reasonable under the new doctrine of Illinois vs. Edward Rodriguez, supra, decided by the U.S. Supreme Court since the taking of this appeal.

Respectfully submitted this 3rd day of ~~November~~ December, 1990.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff, v. RENEE ELDER, Defendant.	*	ORDER AND FINDINGS ON DEFENDANT'S MOTION FOR SUPPRESSION OF EVIDENCE Case No. 891706570 FS

The Defendant's Motion for Suppression of Evidence was heard on December 26, 1989 at 1:30 p.m. The Defendant was present and was represented by Jack C. Helgesen. the state was represented by William McGuire, Deputy Davis County Attorney. The court heard testimony and considered the arguments of the parties, and now enters its Order and Findings.

The court finds that Defendant maintained a reasonable expectation of privacy in his bedroom and that the search of the Defendant's bedroom was conducted without a search warrant, without the Defendant's consent and in the absence of any other fact justifying a warrantless search.

THEREFORE, the court orders suppression of all evidence seized in the Defendant's bedroom.

EXHIBIT "A"

The court considered also the Defendant's arguments that 1) the Defendant maintained a reasonable expectation of privacy in the crawlspace under the home shared by the Defendant; 2) the Defendant maintained a reasonable expectation of privacy in the large box containing plants alleged to be marijuana; 3) the consent of Michelle Lones to the search of the crawlspace was not valid.

The court finds that the crawlspace of the home was a common area used by both occupants of the home, and the consent of the Defendant's mother to search the crawlspace would be valid. Although the Defendant's mother did not consent to a search of the home or the crawlspace under the home, she gave her daughter a key ring with car keys and a key to the living areas of the home, and asked her daughter to bring her personal items from the home. Implied in these facts was the authority to care for the home and its contents during Mrs. Elder's stay in the hospital. With such authority, Mrs. Lones consented to the entry of the police officers into the crawlspace. Having entered the crawlspace, the officers saw the growing plants in plain view through the open end of the box.

THEREFORE, the entry of the police into the crawlspace of the home was lawful and the plants growing in the box were within the plain view of the officers.

The Defendant's Motion to Suppress the Evidence found in the crawlspace of the home is denied.

The court specifically considered the Defendant's argument that officers could not seize the growing plants without a warrant even though they were in plain view through the end of the box. The court finds that the growing plants were intended objects of the search and their seizure by the officers was lawful.

Dated this 12th day of January, 1990.

By the Court:

Rodney S. Page

RODNEY S. PAGE, DISTRICT JUDGE

Approved as to form:

William McGuire

R Elder Kelp

control of the Club's accountants I find this interpretation of the words "trade or business" simply "to affront common understanding and to deny the facts of common experience" *Helvering* v *Horst*, 311 U S 112, 118 (1940) A taxpayer does not alter the nature of an enterprise by selecting one reasonable allocation method over another

The Court's decision also departs from the traditional practice of the courts and the IRS Rather than relying on strict consistency in accounting, the courts long have evaluated profit motivation according to a variety of factors that indicate whether the taxpayer acted in a manner characteristic of one engaged in a trade or business See, *e g*, *Teitelbaum* v *C I R*, 294 F 2d 541, 545 (CA7 1961), *Patterson* v *United States*, 459 F 2d 487, 493–494 (Ct Cl 1972), see Boyle, What is a Trade or Business?, 39 Tax Law 737, 743–745 (1986), Lee, A Blend of Old Wines in a New Wineskin Section 183 and Beyond, 29 Tax L Review 347, 390–447 (1974) In a regulation based on a wide range of prior court decisions, the IRS itself has explained § 162 and profit motivation as follows

> "Deductions are allowable under section 162 for expenses of carrying on activities which constitute a trade or business of the taxpayer and under section 212 for expenses incurred in connection with activities engaged in for the production or collection of income or for the management, conservation, or maintenance of property held for the production of income Except as provided in section 183 and [26 CFR] § 1 183–1 [which authorize individuals and S-corporations to offset hobby losses], no deductions are allowable for expenses incurred in connection with activities which are not engaged in for profit The determination whether an activity is engaged in for profit is to be made by reference to objective standards, taking into account all of the facts and circumstances of each case Although a reasonable expectation of profit is not required, the facts and circumstances must indicate that the taxpayer entered into the activity, or continued the activity, with the objective of making a profit" 26 CFR § 1 183–2(a) (1989)

To facilitate the application of this general standard, the IRS has supplied a list of nine factors, also based on a wide body of case law, for evaluating the taxpayer's profit motive These factors include (1) the manner in which the taxpayer carries on the activity, (2) the expertise of the taxpayer or his advisors, (3) the time and effort expended by the taxpayer in carrying on the activity, (4) the expectation that assets used in the activity may appreciate in value, (5) the success of the taxpayer in carrying on other similar or dissimilar activities, (6) the taxpayer's history of income or losses with respect to the activity, (7) the amount of occasional profits, if any, which are earned, (8) the financial status of the taxpayer, and (9) the elements of personal pleasure or recreation See *id*, at § 1 183–2(b)(1)-(9)

The Court today limits this longstanding approach by pinning the profit-motive requirement to the accounting method that a taxpayer uses to report its ordinary and necessary expenses under § 162(a) Although the tax laws in general strive to reflect the true economic income of a taxpayer, the IRS at times allows taxpayers to use accounting methods that understate their income or overstate their expenses In this case, as the Court itself acknowledges, the IRS stipulated that the Club could use the gross-to-gross allocation method to calculate its expenses under § 162(a) even though this method tends to exaggerate the percentage of fixed costs attributable to the Club's nonmember sales See *ante*, at 3, n 4 Yet, I see no basis for saying that, when the Club took advantage of this unconditional stipulation, it committed itself to the legal position that the gross-to-gross method best reflects economic reality Some inconsistency will exist if the Club uses the gross-to-gross allocation method in computing the expenses, while using some other reasonable accounting method to prove that it undertook the nonmember activity as a trade or business But the solution to this inconsistency lies in altering the stipulation in other cases, not in changing the longstanding interpretation of profit motivation

The precise effect of the Court's holding with respect to the Club remains unclear The Court states only that the Club may not offset its losses from nonmember sales against its investment income But I do not understand how the Court can confine its ruling to investment income alone If the Club's nonmember activity does not qualify as a trade or business, then the Club cannot use § 162(a) to deduct *any* of the expenses associated with the nonmember activity, not even to the extent of gross receipts Confronted with this difficultly at oral argument, respondent stated that, in the absence of statutory authority, the IRS has allowed an offset of expenses against gross receipts out of its own "generosity," a characteristic as rare as it is implausible Tr of Oral Arg 42–43 The IRS, indeed, asserts the authority to disallow the offset in the future See *id*, at 44 Cf 26 U S C § 183 (authorizing individuals and S-corporations to offset hobby losses) This possibility further counsels against making the profit-motive requirement more stringent than necessary to determine whether the Club undertook the nonmember activity as a trade or business For these reasons, I join the Court's opinion, with the exception of Parts III–B and IV, and concur in the judgment

LEONARD J HENZKE JR Washington D C (LEHRFELD CANTER & HENZKE P C ALLEN B BUSH and MCEWEN GISVOLD RANKIN & STEWART on the briefs) for petitioner CLIFFORD M SLOAN Assistant to the Solicitor General (KENNETH W STARR Sol Gen SHIRLEY D PETERSON Asst Atty Gen ROBERT S POMERANCE and KENNETH L GREENE Justice Dept attys on the briefs) for respondent

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No 88–2018

ILLINOIS, PETITIONER *v* EDWARD RODRIGUEZ

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

Syllabus

No 88–2018 Argued March 20 1990—Decided June 21, 1990

Respondent was arrested in his apartment and charged with possession of illegal drugs, which the police had observed in plain view and seized The officers did not have an arrest or search warrant, but gained entry to the apartment with the assistance of Gail Fischer, who represented that the apartment was 'our[s]" and that she had clothes and furniture there, unlocked the door with her key, and gave the officers permission to enter The trial court granted respondent's motion to suppress the seized evidence holding that at the time she consented to the entry Fischer did not have common authority because she had moved out of the apartment The court also rejected the State's contention that, even if Fischer did not have common authority there was no Fourth Amendment violation if the police *reasonably believed* at the time of their entry that she possessed the authority to consent The Appellate Court of Illinois affirmed

Held

1 The record demonstrates that the State has not satisfied its burden of proving that Fischer had "joint access or control for most purposes" over respondent's apartment, as is required under *United States* v *Matlock* 415 U S 164, 171, n. 7, to establish 'common authority"

2 A warrantless entry is valid when based upon the consent of a third party whom the police at the time of the entry, reasonably believe to possess common authority over the premises, but who in fact does not

(a) Because the Appellate Court's opinion does not contain a "plain statement" that its decision rests on an adequate and independent state ground, it is subject to review by this Court See *Michigan* v *Long* 463 U S 1032 1040–1042

(b) What respondent is assured by the Fourth Amendment is not that no government search of his house will occur unless he consents but that no such search will occur that is 'unreasonable " As with the many other factual determinations that must regularly be made by government agents in the Fourth Amendment context the 'reasonableness' of a police determination of consent to enter must be judged not by whether the police were correct in their assessment but by the objective standard of whether the facts available at the moment would warrant a person of reasonable caution in the belief that the consenting party had authority over the premises If not, then warrantless entry without further inquiry is unlawful unless authority actually exists But if so the search is valid *Stoner* v *California* 376 U S 483 reconciled

(c) On remand the appellate court must determine whether the police reasonably believed that Fischer had authority to consent to the entry into respondent's apartment

177 Ill. App 3d 1154 550 N E 2d 65 reversed and remanded

SCALIA J , delivered the opinion of the Court, in which REHNQUIST C J and WHITE, BLACKMUN O'CONNOR, and KENNEDY JJ joined MARSHALL, J , filed a dissenting opinion, in which BRENNAN and STEVENS JJ , joined

JUSTICE SCALIA delivered the opinion of the Court

In *United States* v *Matlock*, 415 U S 164 (1974), this Court reaffirmed that a warrantless entry and search by law enforcement officers does not violate the Fourth Amendment's proscription of "unreasonable searches and seizures" if the officers have obtained the consent of a third party who possesses common authority over the premises The present case presents an issue we expressly reserved in *Matlock*, see *id* , at 177, n 14 whether a warrantless entry is valid when based upon the consent of a third party whom the police, at the time of the entry, reasonably believe to possess common authority over the premises, but who in fact does not do so

I

Respondent Edward Rodriguez was arrested in his apartment by law enforcement officers and charged with possession of illegal drugs The police gained entry to the apartment with the consent and assistance of Gail Fischer, who had lived there with respondent for several months The relevant facts leading to the arrest are as follows

On July 26, 1985, police were summoned to the residence of Dorothy Jackson on South Wolcott in Chicago They were met by Ms Jackson's daughter, Gail Fischer, who showed signs of a severe beating She told the officers that she had been assaulted by respondent Edward Rodriguez earlier that day in an apartment on South California Fischer stated that Rodriguez was then asleep in the apartment, and she consented to travel there with the police in order to unlock the door with her key so that the officers could enter and arrest him During this conversation, Fischer several times referred to the apartment on South California as "our" apartment, and said that she had clothes and furniture there It is unclear whether she indicated that she currently lived at the apartment, or only that she used to live there

The police officers drove to the apartment on South California, accompanied by Fischer They did not obtain an arrest warrant for Rodriguez, nor did they seek a search warrant for the apartment At the apartment, Fischer unlocked the door with her key and gave the officers permission to enter They moved through the door into the living room, where they observed in plain view drug paraphernalia and containers filled with white powder that they believed correctly, as later analysis showed) to be cocaine They proceeded to the bedroom, where they found Rodriguez asleep and discovered additional containers of white powder in two open attaché cases The officers arrested Rodriguez and seized the drugs and related paraphernalia

Rodriguez was charged with possession of a controlled substance with intent to deliver He moved to suppress all evidence seized at the time of his arrest, claiming that Fischer had vacated the apartment several weeks earlier and had no authority to consent to the entry The Cook County Circuit Court granted the motion, holding that at the time she consented to the entry Fischer did not have common authority over the apartment The Court concluded that Fischer was not a "usual resident" but rather an "infrequent visitor ' at the apartment on South California, based upon its findings that Fischer's name was not on the lease that she did not contribute to the rent, that she was not allowed to invite others to the apartment on her own, that she did not have access to the apartment when respondent was away, and that she had moved some of her possessions from the apartment The Circuit Court also rejected the State s contention that, even if Fischer did not possess common authority over the premises, there was no Fourth Amendment violation if the police *reasonably believed* at the time of their entry that Fischer possessed the authority to consent

The Appellate Court of Illinois affirmed the Circuit Court in all respects The Illinois Supreme Court denied the State's Petition for Leave to Appeal, 125 Ill 2d 572 537 N E 2d 816 (1989), and we granted certiorari 493 U S —— (1989)

II

The Fourth Amendment generally prohibits the warrantless entry of a person's home, whether to make an arrest or to search for specific objects *Payton* v *New York* 445 U S 573 (1980), *Johnson* v *United States* 333 U S 10 (1948) The prohibition does not apply, however to situations in which voluntary consent has been obtained, either from the individual whose property is searched, see *Schneckloth* v *Bustamonte*, 412 U S 218 (1973), or from a third party who possesses common authority over the premises, see *United States* v *Matlock*, *supra*, at 171 The State of Illinois contends that that exception applies in the present case

As we stated in *Matlock*, 415 U S , at 171 n 7 '[c ommon authority" rests "on mutual use of the property by persons generally having joint access or control for most purposes " The burden of establishing that common authority rests upon the State On the basis of this record, it is clear that burden was not sustained The evidence showed that although Fischer, with her two small children, had lived with Rodriguez beginning in December 1984, she had moved out on July 1, 1985, almost a month before the search at issue here, and had gone to live with her mother She took her and her children's clothing with her, though leaving behind some furniture and household effects During the period after July 1 she sometimes spent the night at Rodriguez's apartment, but never invited her friends there, and never went there herself when he was not home Her name was not on the lease nor did she contribute to the rent She had a key to the apartment, which she said at trial she had taken without Rodriguez's knowledge (though she testified at the preliminary hearing that Rodriguez had given her the key) On these facts the State has not established that, with respect to the South California apartment, Fischer had "joint access or control for most purposes " To the contrary, the Appellate Court's determination of no common authority over the apartment was obviously correct

III

A

The State contends that, even if Fischer did not in fact have authority to give consent it suffices to validate the entry that the law enforcement officers reasonably believed she did Before reaching the merits of that contention, we must consider a jurisdictional objection that the decision below rests on an adequate and independent state ground Respondent asserts that the Illinois Constitution provides greater protection than is afforded under the Fourth Amendment and that the Appellate Court relied upon this when it determined that a reasonable belief by the police officers was insufficient

When a state court decision is clearly based on state law that is both adequate and independent, we will not review the decision *Michigan* v *Long* 463 U S 1032 1041 (1983) But when 'a state court decision fairly appears to rest primarily on federal law, or to be interwoven with federal law," we require that it contain a "'plain statement' that [it] rests upon adequate and independent state grounds," *id* at 1040, 1042, otherwise "we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so" *Id* at 1041 Here, the Appellate Court's opinion contains no 'plain statement" that its decision rests on state law The opinion does not rely on (or even mention) any specific provision of the Illinois Constitution, nor even the Illinois Constitution generally Even the Illinois cases cited by the opinion rely upon no constitutional provisions other than the Fourth and Fourteenth Amendments of the United States Constitution We conclude that the Appellate Court of Illinois rested its decision on federal law

B

On the merits of the issue, respondent asserts that permitting a reasonable belief of common authority to validate an entry would cause a defendant s Fourth Amendment rights to be 'vicariously waived" Brief for Respondent 32 We disagree

We have been unyielding in our insistence that a defendant's waiver of his trial rights cannot be given effect unless it is "knowing and "intelligent" *Colorado* v *Spring*, 479 U S 564 574–575 (1987), *Johnson* v *Zerbst*, 304 U S 458 (1938) We would assuredly not permit, therefore, evidence seized in violation of the Fourth Amendment to be introduced on the basis of a trial court's mere "reasonable belief"—derived from statements by unauthorized persons—that the defendant has waived his objection But one must make a distinction between on the one hand trial rights that *derive* from the violation of constitutional guarantees and, on the other hand the nature of those constitutional guarantees themselves As we said in *Schneckloth*

> "There is a vast difference between those rights that protect a fair criminal trial and the rights guaranteed under the Fourth Amendment Nothing, either in the purposes behind requiring a 'knowing' and 'intelligent' waiver of trial rights, or in the practical application of such a requirement suggests that it ought to be extended to the constitutional guarantee against unreasonable searches and seizures" 412 U S , at 241

What Rodriguez is assured by the trial right of the exclusionary rule, where it applies, is that no evidence seized in violation of the Fourth Amendment will be introduced at his trial unless he consents What he is assured by the Fourth Amendment itself, however, is not that no government search of his house will occur unless he consents, but that no such search will occur that is "unreasonable" U S Const , Amdt 4 There are various elements, of course, that can make a search of a person s house 'reasonable"—one of which is the consent of the person or his cotenant The essence of respondent's argument is that we should impose upon this element a requirement that we have not imposed upon other elements that regularly compel government officers to exercise judgment regarding the facts namely, the requirement that their judgment be not only responsible but correct

The fundamental objective that alone validates all unconsented government searches is, of course, the seizure of persons who have committed or are about to commit crimes, or of evidence related to crimes But "reasonableness," with respect to this necessary element, does not demand that the government be factually correct in its assessment that that is what a search will produce Warrants need only be supported by "probable cause," which demands no more than a proper "assessment of probabilities in particular factual contexts " *Illinois* v *Gates*, 462 U S 213 232 (1983) If a magistrate, based upon seemingly reliable but factually inaccurate information, issues a warrant for the search of a house in which the sought-after felon is not present, has never been present and was never likely to have been present the owner of that house suffers one of the inconveniences we all expose ourselves to as the cost of living in a safe society, he does not suffer a violation of the Fourth Amendment

Another element often, though not invariably required in order to render an unconsented search "reasonable" is, of course, that the officer be authorized by a valid warrant Here also we have not held that "reasonableness' precludes error with respect to those factual judgments that law enforcement officials are expected to make In *Maryland* v *Garrison*, 480 U S 79 (1987), a warrant supported by probable cause with respect to one apartment was erroneously issued for an entire floor that was divided (though not clearly) into two apartments We upheld the search of the apartment not properly covered by the warrant We said

> "[T]he validity of the search of respondent's apartment pursuant to a warrant authorizing the search of the entire third floor depends on whether the officers' failure to realize the overbreadth of the warrant was objectively understandable and reasonable Here it unquestionably was The objective facts available to the officers at the time suggested no distinction between [the suspect's] apartment and the third-floor premises" *Id* at 88

The ordinary requirement of a warrant is sometimes supplanted by other elements that render the unconsented search "reasonable" Here also we have not held that the Fourth Amendment requires factual accuracy A warrant is not needed, for example, where the search is incident to an arrest In *Hill* v *California*, 401 U S 797 (1971), we upheld a search incident to an arrest, even though the arrest was made of the wrong person We said

> "The upshot was that the officers in good faith believed Miller was Hill and arrested him They were quite wrong as it turned out, and subjective good-faith belief would not in itself justify either the arrest or the subsequent search But sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment and on the record before us the officers' mistake was understandable and the arrest a reasonable response to the situation facing them at the time" *Id* , at 803–804

It would be superfluous to multiply these examples It is apparent that in order to satisfy the "reasonableness" re-

quirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government—whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement—is not that they always be correct, but that they always be reasonable As we put it in *Brinegar* v *United States*, 338 U S 160, 176 (1949)

> "Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability "

We see no reason to depart from this general rule with respect to facts bearing upon the authority to consent to a search Whether the basis for such authority exists is the sort of recurring factual question to which law enforcement officials must be expected to apply their judgment, and all the Fourth Amendment requires is that they answer it reasonably The Constitution is no more violated when officers enter without a warrant because they reasonably (though erroneously) believe that the person who has consented to their entry is a resident of the premises, than it is violated when they enter without a warrant because they reasonably (though erroneously) believe they are in pursuit of a violent felon who is about to escape See *Archibald* v *Mosel*, 677 F 2d 5 (CA1 1982) *

Stoner v *California*, 376 U S 483 (1964) is in our view not to the contrary There, in holding that police had improperly entered the defendant's hotel room based on the consent of a hotel clerk, we stated that "the rights protected by the Fourth Amendment are not to be eroded by unrealistic doctrines of 'apparent authority' " *Id* , at 488 It is ambiguous, of course, whether the word "unrealistic" is descriptive or limiting—that is, whether we were condemning as unrealistic all reliance upon apparent authority, or whether we were condemning only such reliance upon apparent authority as is unrealistic Similarly ambiguous is the opinion's earlier statement that "there [is no] substance to the claim that the search was reasonable because the police, relying upon the night clerk's expressions of consent, had a reasonable basis for the belief that the clerk had authority to consent to the search " *Ibid* Was there no substance to it because it failed as a matter of law, or because the facts could not possibly support it? At one point the opinion does seem to speak clearly

> "It is important to bear in mind that it was the petitioner's constitutional right which was at stake here, and not the night clerk's nor the hotel's It was a right, therefore, which only the petitioner could waive by word or deed, either directly or through an agent " *Id* , at 489

But as we have discussed, what is at issue when a claim of apparent consent is raised is not whether the right to be free of searches has been *waived*, but whether the right to be free of *unreasonable* searches has been *violated* Even if one does not think the *Stoner* opinion had this subtlety in mind, the supposed clarity of its foregoing statement is immediately compromised, as follows

> "It is true that the night clerk clearly and unambiguously consented to the search But there is nothing in the record to indicate that *the police had any basis whatsoever to believe that* the night clerk had been authorized by the petitioner to permit the police to search the petitioner's room " *Ibid* (emphasis added)

The italicized language should have been deleted, of course if the statement two sentences earlier meant that an appearance of authority could never validate a search In the last analysis, one must admit that the rationale of *Stoner* was ambiguous—and perhaps deliberately so It is at least a reasonable reading of the case, and perhaps a preferable one, that the police could not rely upon the obtained consent because they knew it came from a hotel clerk, knew that the room was rented and exclusively occupied by the defendant and could not reasonably have believed that the former had general access to or control over the latter Similarly ambiguous in its implications (the Court's opinion does not even allude to, much less discuss the effects of, "reasonable belief") is *Chapman* v *United States*, 365 U S 610 (1961) In sum, we were correct in *Matlock*, 415 U S , at 177 n 14 when we regarded the present issue as unresolved

As *Stoner* demonstrates, what we hold today does not suggest that law enforcement officers may always accept a person's invitation to enter premises Even when the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry As with other factual determinations bearing upon search and seizure, determination of consent to enter must "be judged against an objective standard would the facts available to the officer at the moment 'warrant a man of reasonable caution in the belief' " that the consenting party had authority over the premises? *Terry* v *Ohio*, 392 U S 1, 21–22 (1968) If not, then warrantless entry without further inquiry is unlawful unless authority actually exists But if so, the search is valid

* * *

In the present case, the Appellate Court found it unnecessary to determine whether the officers reasonably believed that Fischer had the authority to consent because it ruled as a matter of law that a reasonable belief could not validate the entry Since we find that ruling to be in error, we remand for consideration of that question The judgment of the Illinois Appellate Court is reversed and remanded for further proceedings not inconsistent with this opinion

So ordered

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE STEVENS join, dissenting

Dorothy Jackson summoned police officers to her house to report that her daughter Gail Fischer had been beaten Fischer told police that Ed Rodriguez her boyfriend, was her

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* JUSTICE MARSHALL s dissent rests upon a rejection of the proposition that searches pursuant to valid third-party consent are generally reasonable ' *Post* at 7 Only a warrant or exigent circumstances he contends can produce 'reasonableness ' consent validates the search only because the object of the search thereby 'limit[s] his expectation of privacy *post* at 10, so that the search becomes not really a search at all. We see no basis for making such an artificial distinction. To describe a consented search as a non-invasion of privacy and thus a non-search is strange in the extreme And while it must be admitted that this ingenious device can explain why consented searches are lawful, it cannot explain why seemingly consented searches are "unreasonable," which is all that the Constitution forbids See *Delaware* v *Prouse* 440 U S 648, 653–654 (1979) ("[t]he essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of reasonableness upon the exercise of discretion by government officials ') The only basis for contending that the constitutional standard could not possibly have been met here is the argument that reasonableness must be judged by the facts as they were rather than by the facts as they were known As we have discussed in text that argument has long since been rejected

assaulter. During an interview with Fischer, one of the officers asked if Rodriguez dealt in narcotics. Fischer did not respond. Fischer did agree, however, to the officers' request to let them into Rodriguez's apartment so that they could arrest him for battery. The police, without a warrant and despite the absence of an exigency, entered Rodriguez's home to arrest him. As a result of their entry, the police discovered narcotics that the State subsequently sought to introduce in a drug prosecution against Rodriguez.

The majority agrees with the Illinois appellate court's determination that Fischer did not have authority to consent to the officers' entry of Rodriguez's apartment. *Ante*, at 4. The Court holds that the warrantless entry into Rodriguez's home was nonetheless valid if the officers reasonably believed that Fischer had authority to consent. *Ante*, at 11. The majority's defense of this position rests on a misconception of the basis for third-party consent searches. That such searches do not give rise to claims of constitutional violations rests not on the premise that they are "reasonable" under the Fourth Amendment, see *ante*, at 6, but on the premise that a person may voluntarily limit his expectation of privacy by allowing others to exercise authority over his possessions. Cf. *Katz* v. *United States*, 389 U. S. 347, 351 (1967) ("What a person knowingly exposes to the public, even in his home or office, is not a subject of Fourth Amendment protection"). Thus, an individual's decision to permit another "joint access [to] or control [over the property] for most purposes," *United States* v. *Matlock*, 415 U. S. 164, 171, n. 7 (1974), limits that individual's reasonable expectation of privacy and to that extent limits his Fourth Amendment protections. Cf. *Rakas* v. *Illinois*, 439 U. S. 128, 148 (1978) (because passenger in car lacked "legitimate expectation of privacy in the glove compartment," Court did not decide whether search would violate Fourth Amendment rights of someone who had such expectation). If an individual has not so limited his expectation of privacy, the police may not dispense with the safeguards established by the Fourth Amendment.

The baseline for the reasonableness of a search or seizure in the home is the presence of a warrant. *Skinner* v. *Railway Labor Executives Assn.*, 489 U. S. —— (1989). Indeed, "searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton* v. *New York*, 445 U. S. 573, 586 (1980). Exceptions to the warrant requirement must therefore serve "compelling" law enforcement goals. *Mincey* v. *Arizona*, 437 U. S. 385, 394 (1978). Because the sole law enforcement purpose underlying third-party consent searches is avoiding the inconvenience of securing a warrant, a departure from the warrant requirement is not justified simply because an officer reasonably believes a third party has consented to a search of the defendant's home. In holding otherwise, the majority ignores our long-standing view that "the informed and deliberate determinations of magistrates . . . as to what searches and seizures are permissible under the Constitution are to be preferred over the hurried action of officers and others who may happen to make arrests." *United States* v. *Lefkowitz*, 285 U. S. 452, 464 (1932).

I

The Fourth Amendment provides that "[t]he right of the people to be secure in their . . . houses . . . shall not be violated." We have recognized that the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States* v. *United States District Court*, 407 U. S. 297, 313 (1972). We have further held that "a search or seizure carried out on a suspect's premises without a warrant is *per se* unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions." *Coolidge* v. *New Hampshire*, 403 U. S. 443, 474 (1971). Those exceptions must be crafted in light of the warrant requirement's purposes. As this Court stated in *McDonald* v. *United States*, 335 U. S. 451 (1948):

> "The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals." Id., at 455–456.

The Court has tolerated departures from the warrant requirement only when an exigency makes a warrantless search imperative to the safety of the police and of the community. See, *e. g.*, *id.*, at 456, ("We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative"); *Warden* v. *Hayden*, 387 U. S. 294 (1967) (hot pursuit); *Chimel* v. *California*, 395 U. S. 752 (1969) (interest in officers' safety justifies search incident to an arrest); *Michigan* v. *Tyler*, 436 U. S. 499, 509 (1978) ("compelling need for official action and no time to secure a warrant" justifies warrantless entry of burning building). The Court has often heard, and steadfastly rejected, the invitation to carve out further exceptions to the warrant requirement for searches of the home because of the burdens on police investigation and prosecution of crime. Our rejection of such claims is not due to a lack of appreciation of the difficulty and importance of effective law enforcement, but rather to our firm commitment to "the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law." *Mincey*, *supra*, at 393 (citing *United States* v. *Chadwick*, 433 U. S. 1, 6–11 (1977)).

In the absence of an exigency, then, warrantless home searches and seizures are unreasonable under the Fourth Amendment. The weighty constitutional interest in preventing unauthorized intrusions into the home overrides any law enforcement interest in relying on the reasonable but potentially mistaken belief that a third party has authority to consent to such a search or seizure. Indeed, as the present case illustrates, only the minimal interest in avoiding the inconvenience of obtaining a warrant weighs in on the law enforcement side.

Against this law enforcement interest in expediting arrests is "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman* v. *United States*, 365 U. S. 505, 511 (1961). To be sure, in some cases in which police officers reasonably rely on a third party's consent, the consent will prove valid, no intrusion will result, and the police will have been spared the inconvenience of securing a warrant. But in other cases, such as this one, the authority claimed by the third party will be false. The reasonableness of police conduct must be measured in light of the possibility that the target has not consented. Where "[n]o reason is offered for not obtaining a search warrant except the inconvenience to the officers and some slight delay necessary to prepare papers and present the evidence to a magistrate," the Constitution demands that the warrant procedure be observed. *Johnson* v. *United*

States, 333 U S 10, 15 (1948) The concerns of expediting police work and avoiding paperwork "are never very convincing reasons and, in these circumstances, certainly are not enough to by-pass the constitutional requirement" *Ibid* In this case, as in *Johnson*, "[n]o suspect was fleeing or likely to take flight. The search was of permanent premises, not of a movable vehicle No evidence or contraband was threatened with removal or destruction If the officers in this case were excused from their constitutional duty of presenting their evidence to a magistrate, it is difficult to think of a case in which it should be required" *Ibid*

Unlike searches conducted pursuant to the recognized exceptions to the warrant requirement, see *supra*, at ———, third-party consent searches are not based on an exigency and therefore serve no compelling social goal Police officers, when faced with the choice of relying on consent by a third party or securing a warrant, should secure a warrant, and must therefore accept the risk of error should they instead choose to rely on consent.

II

Our prior cases discussing searches based on third-party consent have never suggested that such searches are "reasonable" In *United States* v *Matlock*, this Court upheld a warrantless search conducted pursuant to the consent of a third party who was living with the defendant The Court rejected the defendant's challenge to the search, stating that a person who permits others to have "joint access or control for most purposes assume[s] the risk that [such persons] might permit the common area to be searched" 415 U S, at 171, n 7, see also *Frazier* v *Cupp*, 394 U S 731, 740 (1969) (holding that defendant who left a duffel bag at another's house and allowed joint use of the bag "assumed the risk that [the person] would allow someone else to look inside") As the Court's assumption-of-risk analysis makes clear, third-party consent limits a person s ability to challenge the reasonableness of the search only because that person voluntarily has relinquished some of his expectation of privacy by sharing access or control over his property with another person.

A search conducted pursuant to an officer s reasonable but mistaken belief that a third party had authority to consent is thus on an entirely different constitutional footing from one based on the consent of a third party who in fact has such authority Even if the officers reasonably believed that Fischer had authority to consent, she did not, and Rodriguez's expectation of privacy was therefore undiminished Rodriguez accordingly can challenge the warrantless intrusion into his home as a violation of the Fourth Amendment This conclusion flows directly from *Stoner* v *California*, 376 U. S 483 (1964) There, the Court required the suppression of evidence seized in reliance on a hotel clerk's consent to a warrantless search of a guest's room. The Court reasoned that the guest's right to be free of unwarranted intrusion "was a right, which only [he] could waive by word or deed, either directly or through an agent" *Id*, at 489 Accordingly, the Court rejected resort to "unrealistic doctrines of 'apparent authority'" as a means of upholding the search to which the guest had not consented. *Id*, at 488 [1]

III

Acknowledging that the third party in this case lacked authority to consent, the majority seeks to rely on cases suggesting that reasonable but mistaken factual judgments by police will not invalidate otherwise reasonable searches The majority reads these cases as establishing a "general rule" that "what is generally demanded of the many factual determinations that must regularly be made by agents of the government—whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement—is not that they always be correct, but that they always be reasonable" *Ante*, at 8

The majority's assertion, however, is premised on the erroneous assumption that third-party consent searches are generally reasonable The cases the majority cites thus provide no support for its holding In *Brinegar* v *United States*, 338 U S. 160 (1949), for example, the Court confirmed the unremarkable proposition that police need only probable cause, not absolute certainty, to justify the arrest of a suspect on a highway As *Brinegar* makes clear, the possibility of factual error is built into the probable cause standard, and such a standard, by its very definition, will in some cases result in the arrest of a suspect who has not actually committed a crime. Because probable cause defines the reasonableness of searches and seizures outside of the home, a search is reasonable under the Fourth Amendment whenever that standard is met, notwithstanding the possibility of "mistakes" on the part of police *Id*, at 176 In contrast, our cases have already struck the balance against warrantless home intrusions in the absence of an exigency See *supra*, at —— Because reasonable factual errors by law enforcement officers will not validate unreasonable searches, the reasonableness of the officer s mistaken belief that the third party had authority to consent is irrelevant [2]

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[1] The majority insists that the rationale of *Stoner* is "ambiguous—and perhaps deliberately so" with respect to the permissibility of third-party searches where the suspect has not conferred actual authority on the third party *Ante*, at 9 *Stoner* itself is clear, however; today's majority manufactures the ambiguity When the *Stoner* Court stated that the Fourth Amendment is to not to be eroded "by unrealistic doctrines of apparent authority,'" 376 U S at 488, and that "only the petitioner could waive by word or deed" his freedom from a warrantless search *id*, at 489, the Court rejected precisely the proposition that the majority today adopts The majority regards *Stoner*'s rejection of "unrealistic doctrines of apparent authority" as ambiguous on the theory that the Court might have been referring only to unreasonable *applications* of such doctrines, and not to the doctrines themselves *Ante*, at 9–10 But *Stoner*'s express description of apparent authority *doctrines* as unrealistic cannot be viewed as mere happenstance The Court in fact used the word 'applications' in the same sentence to refer to misapplications of the *actual* authority doctrine "Our decisions make clear that the rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of apparent authority'" 376 U S, at 488 (emphasis added) The full sentence thus unambiguously confirms that *Stoner* rejected any reliance on *apparent* authority doctrines

Nor did the *Stoner* Court leave open the door for a police officer to rely on a reasonable but mistaken belief in a third party's authority to consent when it remarked that "there is nothing in the record to indicate that the police had any basis whatsoever to believe that the night clerk had been authorized by the petitioner to permit the police to search the petitioner s room" *Id*, at 489 Stating that a defendant must "by word or deed" waive his rights *ibid* is not inconsistent with noting that in a particular case, the absence of actual waiver is confirmed by the police s inability to identify any basis for their contention that waiver had indeed occurred

[2] The same analysis applies to *Hill* v *California* 401 U S 797 (1971) where the Court upheld a search incident to an arrest in which officers reasonably but mistakenly believed that the person arrested in the defendant's home was the defendant The Court refused to disturb the state court's holding that "'[w]hen the police have probable cause to arrest one party, and when they reasonably mistake a second party for the first party, then the arrest of the second party is a valid arrest'" *Id*, at 802 (brackets in original) (quoting *People* v *Hill*, 69 Cal 2d 550, 553, 446 P 2d 521 523 (1968)) Given that the Court decided *Hill* before the extension of the warrant requirement to arrests in the home, *Payton* v *New York*, 445 U S 573 (1980), *Hill* should be understood no less than *Brinegar* as simply a gloss on the meaning of "probable cause" The holding in *Hill* rested on the fact that the police had probable cause to believe that Hill had committed a crime In such circumstances the reasonableness of the arrest for which the police had probable cause was not undermined by the officers' factual mistake regarding the identity of the person arrested

The majority's reliance on *Maryland* v *Garrison*, 480 U S 79 (1987), is also misplaced In *Garrison*, the police obtained a valid warrant for the search of the "third floor apartment" of a building whose third floor in fact housed two apartments *Id* , at 80 Although the police had probable cause to search only one of the apartments, they entered both apartments because "[t]he objective facts available to the officers at the time suggested no distinction between [the apartment for which they legitimately had the warrant and the entire third floor] " *Id* , at 88 The Court held that the officers reasonable mistake of fact did not render the search unconstitutional *Id* , at 88–89 As in *Brinegar*, the Court s decision was premised on the general reasonableness of the type of police action involved Because searches based on warrants are generally reasonable, the officers' reasonable mistake of fact did not render their search "unreasonable ' This reasoning is evident in the Court's conclusion that little would be gained by adopting additional burdens 'over and above the bedrock requirement that, with the exceptions we have traced in our cases, the police may conduct searches only pursuant to a reasonably detailed warrant " *Garrison*, *supra*, at 89, n 14

Garrison, like *Brinegar*, thus tells us nothing about the reasonableness under the Fourth Amendment of a warrantless arrest in the home based on an officer's reasonable but mistaken belief that the third party consenting to the arrest was empowered to do so The majority's glib assertion that "[i]t would be superfluous to multiply" its citations to cases like *Brinegar Hill*, and *Garrison*, *ante*, at 8, is thus correct, but for a reason entirely different than the majority suggests Those cases provide no illumination of the issue raised in this case, and further citation to like cases would be as superfluous as the discussion on which the majority's conclusion presently depends

IV

Our cases demonstrate that third-party consent searches are free from constitutional challenge only to the extent that they rest on consent by a party empowered to do so The majority's conclusion to the contrary ignores the legitimate expectations of privacy on which individuals are entitled to rely That a person who allows another joint access over his property thereby limits his expectation of privacy does not justify trampling the rights of a person who has not similarly relinquished any of his privacy expectation

Instead of judging the validity of consent searches, as we have in the past, based on whether a defendant has in fact limited his expectation of privacy, the Court today carves out an additional exception to the warrant requirement for third-party consent searches without pausing to consider whether "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment," *Mincey*, 437 U S , at 394 (citations omitted) Where this free-floating creation of "reasonable" exceptions to the warrant requirement will end, now that the Court has departed from the balancing approach that has long been part of our Fourth Amendment jurisprudence, is unclear But by allowing a person to be subjected to a warrantless search in his home without his consent and without exigency, the majority has taken away some of the liberty that the Fourth Amendment was designed to protect

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No 88-2109

KANSAS AND MISSOURI, ETC , PETITONERS *v* UTILICORP UNITED, INC

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Syllabus

No 88-2109 Argued April 16, 1990—Decided June 21 1990

The respondent—an investor owned public utility operating in the petitioner States—and other utilities and natural gas purchasers filed suit in the District Court against a pipeline company and five gas producers under § 4 of the Clayton Act which authorizes any person injured by a violation of the antitrust laws to sue for treble damages The utilities alleged that the defendants had unlawfully conspired to inflate the price of gas that they supplied to the utilities and sought treble damages for both the amount overcharged and the decrease in sales to customers caused by the overcharge The petitioner States filed separate § 4 actions in the District Court against the same defendants for the alleged antitrust violation asserting *inter alia parens patriae* claims on behalf of all natural persons residing in the States who had purchased gas from any utility at inflated prices The court consolidated all of the actions and granted the utilities partial summary judgment with respect to the defendants defense that since the utilities had passed through all of the alleged overcharge to their customers, the utilities lacked standing because they had suffered no antitrust injury as required by § 4 In light of its conclusion that, under *Hanover Shoe Inc* v *United Shoe Machinery Corp* 392 U S 481 and *Illinois Brick Co* v *Illinois* 431 U S 720 the utilities had suffered antitrust injury as direct purchasers but their customers as indirect purchasers, had not the court dismissed the States *parens patriae* claims The Court of Appeals affirmed the dismissals

Held When suppliers violate antitrust laws by overcharging a public utility for natural gas and the utility passes on the overcharge to its customers only the utility has a cause of action under § 4 because it alone has suffered antitrust injury

1 Three rationales underlie the indirect purchaser rule adopted in *Hanover Shoe* and *Illinois Brick* (1) establishing the amount of an overcharge shifted to indirect purchasers would normally prove insurmountable in light of the wide range of considerations influencing a company's pricing decisions (2) a pass-on defense would reduce the effectiveness of § 4 actions by diminishing the recovery available to any potential plaintiff and (3) allowing suits by indirect purchasers would risk multiple liability because the alleged antitrust violators could not use a pass-on defense in an action by the direct purchasers

2 The aforesaid rationales compel the conclusion that no exception to the indirect purchaser rule should be made for suits involving regulated public utilities that "pass on all of their costs to their customers

(a) Allowing indirect suits in such cases might necessitate complex cost apportionment calculations, since a utility bears at least some portion of a passed-on overcharge to the extent that it could have sought and gained state permission to raise its rates in the absence of the overcharge, cf *Hanover Shoe supra* at 493, and n 9, and since various factors, such as the need to seek regulatory approval, may delay the passing on process and thereby require the utility, in the interim to bear some of the overcharge s costs in the form of lower earnings Here, the certified question leaves unclear whether the respondent could have raised its prices prior to the overcharge, whether it had passed on "most or all" of its costs at the time of its suit, and even the means by which the pass through occurred Proof of these preliminary issues, which are irrelevant to the defendants liability, would turn upon the intricacies of state law, and, if it were determined that respondent had borne some of the costs would require the adoption of an apportionment formula, the very complexity that *Hanover Shoe* and *Illinois Brick* sought to avoid Moreover creating an exception in such cases would make little sense